



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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April 30th, 1997

Minutes of the April 30th, 1997 meeting held in the Governor's cabinet room, State House, Augusta.

Present: Commission Chair G. Calvin Mackenzie; Members Daniel J. Bernier, John D. Devine, Trish A. Riley, Robert E. Tierney, Richard E. Trafton, Peter B. Webster; Counsel Cab Howard; Director Marilyn Canavan.

Absent: Members Nathan L. Grass, Paul A. Violette.

Chairman Mackenzie called the meeting to order at 9:10 a.m.

A motion was then made, under I M.R.S.A. Section 1013(2) (J), to enter into executive session to consider two requests for advisory opinions. The motion was seconded and voted. At 10:30 a.m., the Commission reconvened in regular session whereupon a motion was made to ratify the conclusions reached in closed session and to convey to the relevant parties the Commission's decisions. The motion was seconded and voted. The issues reviewed and conclusions reached in closed session were as follows:

1) Senator William O'Gara inquired as to whether he would have a conflict of interest in voting on certain turnpike-related bills in light of the fact that he is employed by the Maine Turnpike Authority (MTA). It was noted that he would be voting in his capacity as Chair of the Joint Standing Committee on Transportation. After a careful examination of the facts presented and a review of the provisions of I M.R.S.A. Section 1014, the Commission determined that no conflict of interest would exist should Senator O'Gara vote on the bills in question. However, several members did express concern about the appearance of a conflict that might arise from his voting on bills relating to the salaries or benefits of intermediate part-time employees of MTA, since he is a part-time employee. The Commission thus decided to advise Senator O'Gara to excuse himself from voting on any matter that might create the strong appearance of a conflict.

2) Senate President Mark Lawrence inquired as to whether the acceptance by Legislators of free Internet services would constitute a violation of the Legislative Ethics Law or any other Maine law. After a careful review of the facts presented, the Commission determined that acceptance of the services would constitute a violation of I M.R.S.A. Section 1014(l) (B) of the Legislative Ethics Law if the value of the services was more than \$300. Thereupon, Counsel Howard

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expressed the opinion that regardless of the value of the services offered, acceptance of such would constitute a violation of 17-A M.R.S.A. Section 605 of the Criminal Code which prohibits persons from conferring any "pecuniary benefit" whatsoever upon a public servant where that person is likely to have an interest in a matter before the public servant. Citing the basis for that view, he noted that the prospective donor had suggested in her letter to Legislators that the services offered might be useful to them in examining Internet and telecommunications issues expected to come before the Legislature. He said that the statement could reasonably be deemed to demonstrate an interest on the part of the prospective donor in a matter before the Legislature.

On that advice, the Commission agreed to advise President Lawrence of its decision with respect to the Ethics Law and to convey to him the advice of counsel concerning the Criminal Code.

Next, the Commission reviewed Representative Thomas Gieringer's request that the Commission reconsider its decision whereby it found him in violation of 21-A M.R.S.A. Section 1014 and penalized him \$100. Mr. Thomas Laprade was present and represented Representative Gieringer. Asked whether he would be presenting new evidence, Mr. Laprade said that he planned to present a witness who had worked on Representative Gieringer's election campaign and who would corroborate Representative Gieringer's earlier assertions that he had diligently instructed campaign workers to conduct themselves in an ethical manner and to comply with legal requirements.

Ms. Riley then asserted that the information Mr. Laprade proposed to bring forward was not new and additional evidence; that reconsideration was therefore inappropriate. At that point, the Chair invited a motion to reconsider. There being none, the matter was considered closed.

A motion was then made to approve the minutes of the January 31st, 1997 meeting as written. The motion was seconded and voted.

Next, the Commission voted to remove from the table the request of the firm of Doyle & Nelson for relief from a \$200 penalty levied for two late disclosure reports. The reports were filed on behalf of Home Care Alliance of Maine (HCA) and Maine Ambulatory Care Coalition (MACC). Mr. Dan Riley was present and represented the firm. He said that the tardiness of the report was the result of an administrative error and asked the Commission to take into consideration that the firm had conducted no lobbying on behalf of HCA and NACC during the month covered by the report. Mr. Webster moved, and it was seconded, to deny Mr. Riley's request since the record showed the firm had filed late on one other occasion. The motion was seconded and voted.

Next, the Commission considered the appeal of lobbyist Carol Martel-Riess from a \$200 penalty levied at the January 31st meeting for her failure to file a timely annual report on behalf of American Naturopathic Medical Association. Ms. Canavan asked that Ms. Martel-Riess's case be reconsidered on the basis that the staff had failed to notify her of the January meeting. On that information, a motion was made and seconded to reconsider the decision rendered in January concerning Ms. Martel-Riess's report. The motion was voted. Findings presented by the staff were then reviewed. They showed that Ms. Martel-Riess had filed late reports for 6 of her clients in April 1994; that the penalty incurred there from was \$600; and that the Commission



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waived all but \$50 of the penalty. Additional findings showed that the report undergoing review arrived in the Commission office one day late; and that the penalty incurred there from was \$200. At the conclusion of the review, Ms. Martel-Riess rose to address the Commission. She said that she had visited the Commission office on December 13th, 1996, concerned that she "might not be able to get her client to sign his annual report"; that she was advised then that the signatures of both lobbyist and client were required; that she was additionally advised "there was no point in her filing the report without both signatures" and that she should continue to try to obtain her client's signature. She said that on January 31st, the day after the deadline date, she telephoned Ms. Canavan who advised her to file the report unsigned; that she did so on that same day. She said the signed version finally arrived in the Commission office on January 6th, 1997.

Ms. Canavan then said that it was her understanding as well as the understanding of the lobbyist registrar that the Commission staff had several times urged Ms. Martel-Riess to file the report without her client's signature if efforts to obtain such continued to be unsuccessful. Thereupon, Mr. Webster moved, and Mr. Trafton seconded, to waive Ms. Martel-Riess's penalty in full. The motion was voted. It was then moved to penalize the American Naturopathic Medical Association the maximum penalty of \$200 for the tardiness of its annual report. The motion was seconded and voted.

The next item to undergo review was the request of candidate Stephen Olson for relief from the penalty levied for his late post-election report. Staff findings showed that the report arrived in the Commission office 99 days late; that the penalty incurred there from was \$512.82. Mr. Olson was present and represented himself. He said that he left the State the day after the filing date to attend to family business and therefore did not receive the first late notice; that he returned on January 22nd, read the second notice and thereupon filed the report. He then observed that the penalty being levied seemed disproportionate to the violation in light of the fact that he had spent only \$1,500 on his entire campaign. At the conclusion of his remarks, Mr. Trafton moved, and Mr. Bernier seconded, to waive Mr. Olson's penalty in full on the basis that the excuse offered by Mr. Olson appeared to fit within the definition of "mitigating circumstances" defined in 21-A M.R.S.A. 1020-A. The motion was voted.

Next, the Commission considered the requests of those lobbyists seeking relief from late fees. The first such request was that of Susan Mansfield, lobbyist for Planned Parenthood of Northern New England. Staff findings showed that Ms. Mansfield had incurred a penalty of \$100, having filed her March disclosure report late. Ms. Mansfield was present and represented herself. She said that she had conducted no lobbying during the month covered by the report; that she therefore assumed no report was required; that she filed the required report immediately upon realizing her error. Thereupon, Mr. Webster moved, and Mr. Tierney seconded, to waive \$50 of Ms. Mansfield's penalty.

The next request considered was that of Mary Henderson, lobbyist for Maine Equal Justice Project Inc. Staff findings showed that Ms. Henderson incurred a penalty of \$100, having filed her March monthly disclosure report late. Ms. Henderson was present and represented herself. She apologized for missing the deadline, and pointed out that the report was the first she had



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filed late in several years of lobbying. Thereupon, a motion was made, seconded and voted to waive \$50 of Ms. Henderson's penalty.

The Commission then considered the request of Andrew McLean, lobbyist for Blue Alliance Mutual Insurance Company (BAMICO) and Blue Cross Blue Shield of Maine (BCBS) for relief from penalties levied for the following late filings:

- 1) The report due in February for BAMICO, and
- 2) Reports due in March for BAMICO and BCBS.

Staff findings showed that the penalty incurred for each such filing was \$100, the aggregate total penalty thus being \$300. Mr. McLean was present and represented himself. He asked that consideration be given to the fact that the task of filing disclosure reports was new to him; that he therefore was not fully "attuned" to the process. He then assured members that all further reports would be timely filed. At that, Mr. Trafton moved, and it was seconded, to accept the staff recommendations calling for a \$50 reduction in the penalty incurred by Mr. McLean for his February report and assessment of the full penalty of \$200 for his late March reports. The motion was voted, Mr. Bernier and Mr. Webster abstaining because of a conflict of interest.

The next matter to undergo review was the request of Jadine O'Brien, lobbyist for Blue Alliance Mutual Insurance Company and Blue Cross Blue Shield of Maine, for relief from penalties levied for the late reports of her clients. Findings showed her penalty was \$200. Ms. O'Brien was present and represented herself. She asked that the Commission take into consideration that the reports in question were the first she had filed late in 13 years of lobbying. At the conclusion of her remarks, Mr. Trafton moved, and Mr. Tierney seconded that Ms. O'Brien's penalty be reduced to \$100. The motion was voted, Mr. Bernier and Mr. Webster abstaining.

Next, the Commission considered the complaint of Mr. Matt Anson against Maine College Republicans Political Action Committee (MCR). Mr. Anson was present and addressed the Commission at length about the issues raised in his complaint. He alleged that MCR had violated the campaign finance laws by registering late; that as a consequence of its lateness, MCR had missed two quarterly filing deadlines. He then urged the Commission to assess MCR the maximum penalty for its failure to comply with registration and reporting requirements. Mr. Webster thereupon moved that the staff be directed to calculate the total penalty to which MCR would be subject should it be found in violation; that the matter be tabled until the information requested could be reviewed by the Commission. Ms. Riley seconded and the motion was voted.

The Commission then considered the request of Jim McGregor, lobbyist for Maine Merchants Association, for an advisory opinion on whether association newsletters sent to Legislators constitute reportable lobbying. Copies of the newsletters in question were included in agenda materials. Mr. McGregor was present and addressed the Commission about the issues raised in his request. He conceded that a legitimate argument could be made for positing that the purpose of the newsletters was to inform Legislators of his association's position on issues before the Legislature; but he expressed concern at the burden that would result in lobbyists having to estimate and report spending associated with the distribution of such communications. After a brief discussion of the content of the newsletters in question and the applicable statutory



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provisions, members concluded that the newsletters fit within the definition of lobbying contained in 3 M.R.S.A. Section 312-A (9) since their apparent purpose was to influence legislation action that consequently, the costs associated with circulating the newsletters were reportable lobbying expenditures under 3 M.R.S.A. Section 317(l) (E). A motion was made to so advise Mr. McGregor by letter. The motion was seconded and voted, Mr. Bernier abstaining

Next, the Commission reviewed a news story published in the Casco Bay Weekly in which it was alleged that candidate Annette Høglund had failed to disclose her campaign finances in their entirety in reports filed with the Commission. The transactions allegedly omitted related to the staging of beano games by her campaign committee. Mr. William Cote was present and represented Ms. Høglund. He argued that the complexity of the applicable statutes makes it difficult for many to understand the requirements with respect to the reporting of games of chance; and he then asserted that the record shows Ms. Høglund made a good faith effort to comply with the requirements governing candidates for public office. At the conclusion of his remarks, Mr. Webster moved that the staff be directed to conduct preliminary fact finding into the issues raised by the Casco Bay Weekly; and that as part of its fact-finding mission, the staff consult with the relevant parties and examine the factual records to determine whether the Commission should proceed with an investigation. The motion was seconded and voted.

The Commission then voted to remove from the table the case of Concerned Maine Families Political Action Committee (CMF). Central to the case was the continued refusal of CMF to comply with the Commission's directive that it reports the forgiveness of certain debts as campaign contributions. On completing its review of the staff's recommendation, it was moved, seconded, and voted to refer the case to the Attorney General for enforcement pursuant to the provisions of 1 M.R.S.A. Section 1006 and 21-A M.R.S.A. Section 1003(3).

Next the Commission considered the request of a lobbyist for guidance on whether he would violate any ethics laws by inviting to dinner a Legislator who is a personal friend. According to the lobbyist, the dinner would be strictly a social affair with no discussion of legislation. Asked for advice, Counsel Howard expressed the view that the answer to the question turns on whether the intention of the lobbyist in providing the meal was to influence the friend's (legislator's) vote. On that advice, it was moved, seconded and voted to respond that providing the meal would be a matter of intent or objective but that there should be no distinction made between the offering of a restaurant meal or providing a meal in the lobbyist's home.

The next item to undergo review was the late post-election report of candidate Gary W. Moore. Staff findings showed that the report arrived in the Commission office 13 days late, and that the penalty incurred from there was \$225.81. In his letter to the Commission, Mr. Moore said the chief factor contributing to the delinquency of the report was the illness of his wife's mother. At the conclusion of the Commission's review, Mr. Webster moved, and Mr. Trafton seconded, to deny Mr. Moore's request for a waiver on the basis of the staff's findings which indicated that Mr. Moore had engaged a treasurer to complete and file his reports; that he had conducted little activity and had little to report; that therefore, filing a timely report should not have been overly burdensome. The motion was voted.



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A motion was then made, seconded, and voted to penalize the following lobbyists for the amounts shown below: (Mr. Webster and Mr. Bernier abstained from voting on the Blue Cross/Blue Shield matter.)

| Lobbyist name/ employer | Penalty incurred | Penalty assessed |
|--|------------------|------------------|
| Joseph Ditre/Consumers for Affordable Health Care | \$100 | \$50 |
| John W. Geismar/Sisters of Charity Health System | \$100 | \$50 |
| Christos J. Gianopoulos/Maine Coalition of Counseling Agencies | \$100 | \$50 |
| Bonnie Lewis-Titcomb/Blue Cross Blue Shield | \$100 | \$50 |
| Wanda L. Plumer/Maine Publicity Bureau | \$100 | \$50 |
| John Quirk/Eli Lilley and Co. | \$100 | \$50 |

Next, the Commission reviewed the supplemental agenda which consisted of three additional requests by lobbyists for relief from penalty. A motion was made, seconded, and voted to penalize the following lobbyists for the amounts shown below:

| Lobbyist name/ employer | Penalty incurred | Penalty assessed |
|--|------------------|------------------|
| Kimball L. Kenway/Access Communications | \$100 | \$50 |
| Charlotte Pease/NYLCare Health Plans of ME | \$100 | \$50 |
| *Gary C. Wood/City of Portland | \$100 | \$100 |

*Waiver denied because a prior violation occurred.



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Next Mr. Howard discussed a draft amendment designed to expedite enforcement of penalty collections. The legislation would authorize the Commission staff to bring action in District Court to enforce the penalty provisions set forth in 21-A M.R.S.A. Section 1020-A. A motion was made to recommend to the Legislature that the proposal be introduced at the next regular Legislative session. The motion was seconded and voted.

Ms. Canavan then reported on the steps she has taken thus far to implement the provisions of the campaign finance reform act passed by voters in November.

The next order of business was the scheduling of a subcommittee meeting to discuss the draft study report circulated following the January meeting. The date decided upon was May 24th, 1997.

At 12:00 noon, a motion was made, seconded, and voted to enter into executive session so that Counsel Howard might brief the members as to the progress being made and strategies being employed to counter the claims brought by the National Right to Life Political Action Committee State Fund and the Maine Civil Liberties Union et al. concerning the legality of certain provisions in the November 1996 citizens' initiative.

Also discussed in closed session were the following items:

- 1) The Commission's draft personnel policy, and
- 2) The request of a Legislator for an advisory opinion.

A copy the draft policy was circulated to members and comments were invited. Thereupon, Mr. Mackenzie promised to pass the draft proposal along to the new Commission together with any suggestions or comments members might wish to offer.

The Commission reconvened in regular session at 12:20 a.m. whereupon a motion was made to ratify the conclusions arrived at in closed session with respect to the request of Representative John Vedral for an advisory opinion. The issues reviewed and conclusions reached with respect to that request were as follows:

Representative Vedral inquired as to whether any conflict of interest would exist in his voting on Internet and telecommunications issues in light of the fact that he is employed by a telecommunications company that sometimes finds itself in competition with utilities that are regulated by the Legislature. On completing its review of the information at hand, the Commission concluded that Representative Vedral would not have a conflict of interest in voting on telecommunications and Internet issues because the benefit that would accrue to him thereupon would not be unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment (I M.R.S.A. Section 1014(l) (F).

At that point, Mr. Webster inquired as to why the complaints of Mr. Matt Anson with respect to



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Representatives Saxl and Davidson were described as informational when in fact, they could quite properly be deemed to be complaints. To that, Ms. Canavan explained that several of the issues raised in the complaints were without merit, and that those having merit had been corrected by Representatives Saxl and Davidson at the request of the staff. Mr. Webster then asked that the complaints be placed on the agenda of the next meeting and that Representatives Saxl and Davidson be notified of that action.

The request was noted by staff.

The meeting was adjourned at 12:25 p.m.

Respectfully submitted,

Marilyn Canavan, Director